Supreme Court, U.S.
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No. 00-211

In The

Supreme Court of the United States

CHARLES L. GRIMES and
JANE GILLESPIE GRIMES, h/w,

Petitioners,

v.

NORTHWEST AIRLINES, INC.,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit

BRIEF OF NORTHWEST AIRLINES, INC. IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF QUESTIONS PRESENTED

Numerous Northwest Airlines, Inc. (Northwest) personnel attempted to discuss with Petitioner Charles L. Grimes (Petitioner) the fact that he was sitting in the wrong seat on Northwest Flight 0342. He had just taken a flight from Vancouver, British Columbia to Detroit and was scheduled to continue his journey from Detroit to Philadelphia. For the safety of other passengers that could be harmed and to permit Petitioner to discuss the matter in private, the flight crew repeatedly asked Petitioner to step into the jetway. Petitioner steadfastly refused, becoming increasingly verbally abusive, insulting a flight attendant and announcing that airport police would have to arrest him to get him off the plane. Thereafter, airport police removed Petitioner from the plane.

The questions presented are as follows:

1. Whether the court below properly held that Petitioner did not suffer an "accident which caused the damage" within the meaning of Article 17 of the Convention for the Unification of Certain Rules Relating to International Transportation by Air, October 12, 1929 (the Warsaw Convention), 49 Stat. 3000 (1934), T.S. No. 876 (1934), codified as amended at 49 U.S.C.A. § 40105?

2. Whether the limitation of liability provision in Article 25 creates a separate cause of action for "wilful misconduct" even where there is no "accident?"

PARTIES TO THE PROCEEDING

The caption of the case in this Court contains the names of all the parties.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Respondent Northwest Airlines, Inc. makes the following disclosure:

1) Respondent, a nongovernmental corporation, has the following parent corporations:

Respondent is a wholly owned subsidiary of Northwest Airlines Corp.

2) The following all publicly held companies hold 10% or more of Respondent's stock:

Alliance Capital.

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OPINIONS BELOW

The Judgment and Opinion of the United States Court of Appeals for the Third Circuit is not reported but is reproduced in Petitioner's Appendix (Pet. A-) at 1a and 6a, respectively. The Opinion of the United States District Court for the Eastern District of Pennsylvania (the district court) from which this appeal arose is reported at 1999 WL 562244 (E.D.Pa.) and is reproduced at Pet. A-8a.

While Petitioners have also reproduced the unreported Opinion and Order of the district court granting Northwest's Motion in Limine, Order of the district court adopting Magistrate Judge's Report and Recommendation and Report and Recommendation of Magistrate Judge on Punitive Damages, those Opinions and Orders are not relevant to this appeal. *See* Pet. A-16a; Pet. A-19a; Pet. A-20a.[1]

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[1] The Opinion and Order of the district court granting Northwest's Motion in Limine precluded Petitioners from presenting speculative evidence that Northwest caused them to suffer losses as a result of Petitioner's alleged inability to fly for four months. *See* Opinion and Order of the district court granting Northwest's Motion in Limine reported at 1999 WL 527831 (E.D.Pa.) and reproduced at Pet. A-16a.

The Order of the district court adopting Magistrate Judge's Report and Recommendation and the Report and Recommendation of Magistrate Judge on Punitive Damages concerned Northwest's Motion for Judgment on the Pleadings to dismiss Count VII of Petitioners' Complaint in which Petitioners requested punitive damages. *See* Pet. A-19a-20a. None of these Opinions and Orders are relevant here.

JURISDICTION

Northwest does not dispute the basis of appellate jurisdiction. However, Northwest disputes the basis of jurisdiction of the district court for the underlying action. Petitioners claim that the district court had jurisdiction pursuant to both 28 U.S.C. § 1332 based upon the diversity of the parties and an amount in controversy exceeding $75,000.00. Petitioners also claim that federal court jurisdiction exists pursuant to 28 U.S.C. § 1331, providing for jurisdiction "of all civil actions arising under the Constitution, laws, or treaties of the United States." Pet. at 3. Northwest disputes Petitioners' contention this case involves an amount in controversy exceeding $75,000.00. The district court's jurisdiction should be based solely upon 28 U.S.C. § 1331.

TREATIES INVOLVED

This case involves the Convention for the Unification of Certain Rules Relating to International Transportation by Air, October 12, 1929 (the Warsaw Convention), 49 Stat. 3000 (1934), T.S. No. 876 (1934), codified as amended at 49 U.S.C.A. § 40105. *See* Pet. A-25a.

STATEMENT OF THE CASE

The claims of Petitioners Charles L. Grimes (Petitioner) and Jane Gillespie Grimes (together Petitioners) stem from an incident that allegedly took place at Detroit Metropolitan Airport on August 13, 1998 on board a

Northwest Airlines, Inc. (Northwest) aircraft. Petitioner had flown from Vancouver, British Columbia to Detroit and was scheduled to complete his journey on Flight 0342, from Detroit to Philadelphia.

Upon boarding the flight in Detroit, Petitioner took a seat in the exit row which was not assigned to him. Northwest's flight crew tried to discuss this fact with him and resolve his seating assignment. First the gate agent, Mark Leone, then the head of customer service and finally the captain asked him to step into the jetway to resolve the matter. (The flight crew wished to separate him from other passengers who could be harmed if he became violent. They also felt that the jetway presented a place where Petitioner could speak in a dignified manner without being watched by other passengers.)

Petitioner refused. He became visibly angry and began to shake, calling Mr. Leone "a psychotic deformed dwarf" and announcing that airport police would have to arrest him to get him off the plane.

Thereafter, airport police officers removed him from the aircraft. Petitioner had become a safety risk:

> A: * * *
>
> "Somebody that's being belligerent on the ground at the gate, in the event of some emergency in the air, why should we expect them to be any less belligerent in following instructions on in the air; so, with that, it became a safety of flight item, and I went back to assess the situation and when Mr. Grimes refused to step out on the jet way and talk reasonably about the situation, is when I made my decision that he would be off the airplane primarily for safety."

(Deposition of the captain, James L. Rosser, Feb. 17, 1999, at p. 42). Petitioner said that he was not injured in the incident in which the police merely handcuffed him, removed him from the plane and released him within a half hour.

Petitioners filed suit against Northwest by way of a seven count Complaint in the United States District Court for the Eastern District of Pennsylvania. Petitioners' Complaint stated claims against Northwest for false arrest and imprisonment, assault and battery, intentional infliction of emotional distress, defamation and negligence and contained a request for punitive damages. Because this action is governed by the Warsaw Convention, the district court had jurisdiction of the case pursuant to 28 U.S.C. § 1331 providing for federal question jurisdiction.

Petitioner challenges the entry of summary judgment in Northwest's favor. Northwest moved for summary judgment because Petitioner's claimed injuries did not result from an "accident" within the meaning of Article 17 of the Warsaw Convention. The district court granted the motion. Pet. A-8a-15a.[2]

The United States Court of Appeals for the Third Circuit affirmed. The court held that Petitioner had not suffered injuries as a result of an "accident" within the meaning of Article 17. Pet. A-1a-5a. The court further held that the limitation of liability provision in Article 25 of the Warsaw Convention does not create a cause of action for "wilful misconduct" where a plaintiff has not

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[2] The court also granted Northwest's motion for summary judgment as to the claims of Jane Gillespie Grimes (the Petitioner-wife), *see* Pet. A-8a-15a, which Petitioners do not challenge.

established the elements of a cause of action for an "accident" under Article 17. *Id.* at 4a, n. 3.

SUMMARY OF REASONS FOR DENYING CERTIORARI

Certiorari is granted only for compelling reasons. This Court should deny Petitioners' writ of certiorari in this case because there is no compelling reason to grant it. Petitioners claim that the Third Circuit's holding that there was no "accident" under Article 17 is important because the Warsaw Convention applies to millions of travelers who fly to and from the United States. The fact that the treaty applies to large numbers of people is indisputable. However, that does not establish that the question whether there was an "accident" involves an unsettled important question in this case. Otherwise, *any* issue involving the Warsaw Convention, or international air travel in general, regardless of prior judicial rulings, would be important in *any* case it arose.

Not only do Petitioners fail to show that this holding is "important" and unsettled; they fail to establish that the decision is inconsistent with relevant decisions of this Court and with decisions of other United States courts of appeals on the same matter. *See* SUP. CT. R. 10. The Third Circuit's decision is perfectly consistent with the cases with which Petitioners claim it conflicts, *In re Air France v. Saks*, 470 U.S. 392, 405 (1985), *El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng*, 525 U.S. 155 (1999) and *Krys v. Lufthansa German Airlines*, 119 F.3d 1515 (11th Cir. 1997), *cert. denied*, 522 U.S. 1111 (1998). Petitioners advance, in favor of an

inconsistency, disputed facts which have no bearing on the legal question presented. There is no split of authority and therefore no compelling reason to grant certiorari.

Certiorari should also be denied on the second question Petitioners seek to present, whether Article 25 creates an independent cause of action. Petitioners fail to establish that there is any unresolved or conflicting issue of sufficient import to warrant this Court's review. *Air France, El Al, Krys, supra,* and *Asher v. United Airlines,* 70 F. Supp.2d 614 (D. Md. 1999) are all consistent with each other as well as with this case. There must be an "accident which caused the damage so sustained." So states the settled, consistent prior rulings of our courts.

Petitioners argue that certiorari should be granted because the decision rests upon a "principle" of treaty construction Petitioners claim this Court condemns. *See* Pet. at 12. Petitioners cite no authority showing that certiorari is appropriate in such a case. However, contrary to Petitioners' assertions, the decision below is not in conflict with any principle of proper treaty construction. The court's interpretation of the treaty is consistent with its plain language, this Court's construction of its provisions, *Asher, supra,* and the authority of the other federal courts the *Asher* decision collects. Certiorari should therefore be denied.

REASONS FOR DENYING CERTIORARI

I. This Court Should Not Grant Certiorari On The Question Of Whether There Was An "Accident" Within The Meaning of Article 17.

(1) The Question Is Not An Unsettled "Important Question Of Federal Law."

This Court should deny certiorari. Rule 10 of the Rules of the Supreme Court of the United States provides that a writ of certiorari should be granted only for compelling reasons:

> Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for certiorari will be granted only for compelling reasons. The following . . . indicate the character of the reasons the Court considers:
>
> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of the Court's supervisory power;
>
> (b) [matters related to a state court decision];
>
> (c) . . . a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that

> conflicts with relevant decisions of this Court.

SUP. CT. R. 10. There is no compelling reason to grant this petition. Northwest does not dispute Petitioners' statement that millions of passengers travel by air internationally. However, it does not follow that therefore the question of whether there was an "accident" in this case involves an unsettled important question. If it did, *any* issue involving the Warsaw Convention, and indeed any issue involving international travel, would be important in *any* case, regardless of prior decisions. Petitioners must demonstrate why in this case, involving a passenger who refused to vacate his seat, this Court needs to settle the question.

(2) Contrary To Petitioners' Assertions, The Decision Below Is Not In Conflict With Decisions Of This Court Or Of The Eleventh Circuit.

Petitioners not only failed to establish the importance of the question whether there was an "accident;" Petitioners' argument that the decision below is inconsistent with this Court and other courts of appeals' decisions on "the same . . . matter" also fails. *See* SUP. CT. R. 10.

Petitioners claim that the Third Circuit's decision conflicts with *In re Air France v. Saks*, 470 U.S. 392, 405 (1985), *El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng*, 525 U.S. 155 (1999) and *Krys v. Lufthansa German Airlines*, 119 F.3d 1515 (11th Cir. 1997), *cert. denied*, 522 U.S. 1111 (1998). They are simply incorrect.

In *Saks*, this Court defined the term "accident" in Article 17 of the Warsaw Convention as "an unexpected

or unusual event or happening that is external to the passenger." *Id.*, 470 U.S. at 405. The Third Circuit applied that definition and held that there was no "accident." That holding does not conflict with *Saks*. Although Petitioner is obviously unhappy with the decision, the application of fact to law does not create a legal question. There, quite simply, is no split of authority requiring action by this Court. This case therefore does not warrant certiorari.

Petitioners next claim that the Third Circuit's decision is inconsistent with dictum in *El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng*, 525 U.S. 155 (1999). In *El Al*, this Court held that "recovery for a personal injury suffered 'on board [an] aircraft or in the course of any of the operations of embarking or disembarking,' Art. 17, 49 Stat. 3018, if not allowed under the Convention, is not available at all." *Id.*, 525 U.S. at 161.

In this case, the Third Circuit held that there was no "accident" under Article 17 and thus, no action. Nothing in the Third Circuit's holding conflicts with *El Al*.

Petitioners argue that there is a conflict because in *El Al* this Court questioned whether, under the facts of that case, an "accident" occurred. Petitioners' argument again fails because it depends on a factual analysis of the cases, not the definition of "accident." Petitioners present no unsettled legal question so certiorari is not warranted.

It is true, as Petitioners note, that where flight personnel serve a passenger alcohol and he becomes drunk, injuries he causes another passenger will fall within the *Saks* definition of "accident." *See Langadinos v. American*

Airlines, Inc., 199 F.3d 68 (1st Cir. 2000); *Oliver v. Scandinavian Airlines Sys.*, 17 CCH AV. Cas. 18,283 (Md. 1983). However, those cases present distinguishable facts, not a conflicting legal ruling. Moreover, those cases are not on "the same . . . matter" as this case. *See* SUP. Ct. R. 10. Petitioner does not claim that a drunken passenger, or any other passenger, caused his injuries.

Petitioners claim that the Third Circuit's approach is inconsistent with *Krys v. Lufthansa German Airlines*, 119 F.3d 1515 (11th Cir. 1997), *cert. denied*, 522 U.S. 1111 (1998). In *Krys*, the Eleventh Circuit reasoned that the continuation of a flight to its destination is not an "unusual or unexpected event . . . external to the plaintiff." The court therefore held that the plaintiff's injuries, which were suffered thereby,[3] were not the result of an "accident." *Id.* at 1522.

In the case at bar, the Third Circuit likewise found that a passenger's refusal to follow crew member instructions, and to demand his own arrest, do not amount to an "unexpected or unusual event . . . external to the passenger." Nothing in *Krys* conflicts with the Third Circuit's decision in this matter.

Finally, Petitioners claim that *Wallace v. Korean Air*, 214 F.3d 293 (2d Cir. 2000) is conflicting. In *Wallace*, the plaintiff claimed that she was sexually groped by another passenger. *See id.* The Second Circuit decided that she suffered her injuries for reasons external to her actions and, therefore, in an "accident." In reaching this decision, the Second Circuit applied the same *Air France* analysis

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[3] Plaintiff suffered a heart attack.

used by the Third Circuit. These holdings are not in conflict. *See* SUP. CT. R. 10. This Court should decline to grant certiorari on the question of whether there was an "accident."

II. This Court Should Deny Certiorari On The Question Of Whether Article 25 Creates An Independent Cause Of Action For Mere "Wilful Misconduct" Absent "An Accident Which Caused The Damage So Sustained."

(1) The Question Is Not An Unsettled "Important Question Of Federal Law."

Certiorari should be denied on the question whether Article 25 creates an independent cause of action. Petitioners failed to establish that the matter is an unsettled "important question of federal law." Petitioners made the same argument for its importance they did on the question of whether there was an "accident;" they based their argument on the fact millions of people fly internationally. That does not satisfy the standard of review. "Importance" is not enough. It must also be a question "that has not been, but should be, settled by this Court." SUP. CT. R. 10(c). Article 25 does not speak of "wilful misconduct" in the abstract. By its plain terms, the article refers to "the damage" that is "caused by" the carrier's "wilful misconduct:"

> **Article 25**
>
> (1) The carrier shall not be entitled to avail himself of the provisions of this convention

> which exclude or limit his liability, if the damage is caused by his wilful misconduct. . . .

Article 25, Pet. A-36a. "Wilful misconduct" that does not cause "the damage" does not give rise to a cause of action. Petitioners cite no authority to the contrary.

(2) Contrary To Petitioners' Assertions, The Decision Below Is Consistent With This Court's Interpretation Of The Treaty And That Of Other Courts Of Appeals.

Certiorari should also be denied because Petitioners' do not argue that there is a compelling reason to grant it. Petitioners do not claim that the Third Circuit decision is in conflict with that of this Court or another federal appellate court. Rather, Petitioners argue that this Court should grant certiorari because the decision rests upon a "principle" of treaty construction this Court allegedly condemns. *See* Pet. at 12. Petitioners cite no authority establishing that certiorari is appropriate in such a case. Certiorari should therefore be denied.

Moreover, the Third Circuit's decision does not, in fact, run contrary to any principle of proper treaty construction. Petitioners assume that because the Third Circuit held that Article 25 does not apply absent "an accident," the Third Circuit would preclude an action for "wilful misconduct" causing an injury. That is not the case. The Third Circuit's holding precludes a recovery for "wilful misconduct" without an "accident." *See* Third Circuit Opinion, Pet. A-4a ("To recover under the Convention one must always establish the elements *of a cause*

of action under Article 17.") (citations omitted and emphasis supplied).

This reading of the treaty is consistent with its plain language and this Court's construction of the document. Under this interpretation, Article 17 sets forth the elements of a cause of action under the treaty. It provides that there must be "damage sustained in the event of . . . bodily injury suffered by the passenger," and an "accident which caused the damage so sustained." Article 17, Pet. A-33a. Where those elements are present, a carrier is liable for the damage. *Id.*

Articles 20, 21 and 22 of the treaty exclude or limit that liability. Article 20, for instance, excludes the carrier from liability "if he proves that he and his agents have taken all necessary measures to avoid the damage. . . . " Article 20, Pet. A-34a. Article 21 limits or excludes liability, authorizing the court to "exonerate the carrier wholly or partly" if he can prove that the damage was caused or contributed to by the injured person's negligence. Article 21, Pet. A-34a. Article 22 limits the carrier's liability to specific monetary amounts. Article 22, Pet. A-35a.

Article 25 fits within this scheme. It precludes a carrier from limiting or excluding its liability where the carrier's "wilful misconduct" causes "the damage." *See* Article 25, Pet. A-36a. "[T]he damage" it refers to is that required by Article 17, "the damage sustained in the event of . . . bodily injury." Thus, after a plaintiff establishes a cause of action under Article 17, a carrier may limit or exclude its liability under Articles 20 through 22 unless the carrier's "wilful misconduct" caused "the

damage." In that event, Article 25 prohibits the carrier from doing so.

This interpretation of the treaty flows from this Court's decision in *El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng*, 525 U.S. 155 (1999) and the great weight of authority from other federal courts summarized in this action's mirror image, *Asher v. United Airlines*, 70 F. Supp.2d 614 (D. Md. 1999).

While not passing on the issue, in *El Al* this Court conducted nearly an identical analysis on the subject:

> . . . the Convention describes and defines the three areas of air carrier liability [which include] (personal injuries in Article 17. . . .), the conditions exempting air carriers from liability (Article 20), the monetary limits of liability (Article 22) ***and the circumstances in which air carriers may not limit liability (Articles 23 and 25).***

Id. at 169 (emphasis supplied). If this was not sufficiently clear, the Court noted:

> Chapter III of the Convention sets forth a number of other rules governing air carrier liability. Among these, Article 20 relieves a carrier of liability if it has "taken all necessary measures to avoid the damage." Article 22 sets monetary limits on a carrier's liability for harm to passengers and baggage. Article 23 invalidates "[a]ny [contract] provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in the [C]onvention." ***Article 25(1) renders the Convention's limits on liability inapplicable if the damage is caused by a carrier's "wilful misconduct."***

El Al, 525 U.S. at 163, n. 7 (citations omitted and emphasis supplied).

Asher, supra, and the great weight of authority from other federal courts cited in the decision, further supports this. As the *Asher* court noted:

> While there is no published Fourth Circuit decision on point, the overwhelming weight of judicial authority holds that Article 25(1) [containing the 'wilful conduct' provision] merely lifts the monetary limitation liabilities of Article 22 of the Convention; it does not create an independent grounds [sic] by which to state tort claims that would not survive under the Convention. *See . . . Stone v. Mexicana Airlines, Inc.*, 610 F.2d 699, 700 (10th Cir. 1979) (holding wilful misconduct did not exclude Warsaw Convention's statute of limitations period); *Floyd v. Eastern Airlines*, 872 F.2d 1462, 1483-85 (11th Cir. 1989) (holding wilful misconduct only removes liability cap in Article 22 and does not make Warsaw Convention inapplicable as a whole), *rev'd on other grounds*, 499 U.S. 530 . . . (1991); *In re Korean Air Lines Disaster of September 1, 1983*, 932 F.2d 1475, 1488-89 (D.C. Cir. 1991) (holding Article 17 is not interpreted as one of the provisions that "exclude or limit" liability for which Article 25 applies.)

Asher, supra, 70 F.Supp.2d at 620.

There is no compelling reason to grant certiorari. The Third Circuit did not utilize a principle of treaty construction this Court has condemned. The Third Circuit interpreted the treaty in a manner that follows this Court's

interpretation and the great weight of authority from other federal courts.

CONCLUSION

For the foregoing reasons, Respondent Northwest Airlines, Inc. respectfully requests this Court to deny certiorari.

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Date: August 22, 2000